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FILED

MAR 05 2015

Clerk, U S District Court
District Of Montana
Billings

CLERK OF THE
DISTRICT COURT
KRISTIE LEE BOELTER

2014 SEP 3 AM 8 58

FILED

BY

DEPUTY

CV-15-12-BLG-SPW-CSO

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

ANDREW P. CATES,

Plaintiff,

v.

CCA OF TENNESSEE, LLC

Defendant.

Cause No. DV D4V 14-1269

Judge GREGORY R. TODD

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

120198320

COMES NOW Plaintiff, ANDREW P. CATES, by and through his attorney David S.
Freedman of Law Offices of David S. Freedman, P.C., for causes of action against Defendant,
CCA OF TENNESSEE, LLC, complains as follows:

1. PARTIES

1.1 Plaintiff, ANDREW P. CATES, was at all times relevant to this matter, a resident of
Yellowstone County, Montana.

1.2 Defendant, CCA OF TENNESSEE, LLC, is a business organized in the state of Tennessee,
with a principal office in Nashville, Tennessee, registered with the state of Montana, owns and
operates Crossroads Correctional Facility, a prison located at 50 Crossroads Drive, Shelby,

1 Montana.

2 **2. JURISDICTION AND VENUE**

3 2.1 This Court has jurisdiction in this matter, and venue is properly situated in Yellowstone
4 County, pursuant to Sections 25-2-122(b), (c), MCA (2013), because Yellowstone County is the
5 county in which Plaintiff resides, and the county in which the corporation's resident agent is
6 located, as required by law.
7

8 **3. FACTS RELAVENT TO ALL CLAIMS**

9 3.1 Beginning in 2009, Plaintiff complained to staff at Crossroads Correctional Facility, a
10 prison owned and operated by Defendant, of debilitating pain in his right eye. Defendant's
11 treatment plan for Plaintiff was a two-week administration of eye drops for glaucoma, in order to
12 treat what turned out to be a malignant tumor. Defendant's medical staff ridiculed Plaintiff for
13 seeking medical attention, telling him that he was faking the obvious pain and discomfort he was
14 in for purposes of trying to obtain pain medication. Defendant's failure to promptly treat
15 Plaintiff's condition directly resulted in Plaintiff's retina being torn in half by the tumor growing
16 in his right eye.
17

18 3.2 Prior to Plaintiff's arrival at Defendant's prison, Plaintiff was tormented by correctional
19 officers at Montana State Prison (MSP) in Deer Lodge, Montana, at the direction of Correctional
20 Officer James "Tyson" Lovett. Lovett is the ex-husband of Plaintiff's current wife. Lovett
21 sought to systematically: harass, discredit and torment Plaintiff during Plaintiff's incarceration
22 at MSP. Lovett also stalked Plaintiff's wife hoping that, by defaming Plaintiff by making
23 untruthful comments to Plaintiff's wife, that he might break up the relationship between Plaintiff
24 and his wife. Prison officials, to include Warden Leroy Kirkegard and Major Tom Wood, turned
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1 a blind-eye and deaf-ear to the numerous reports made by Plaintiff's wife, to the prison,
2 concerning Lovett's systematic harassment of both Plaintiff and his wife. The pleas for help
3 made by Plaintiff's wife to prison officials were responded to with hollow promises that a
4 thorough investigation would be conducted and that a full response would be provided.

5 3.4 Lovett's desperate attempts to break Plaintiff and his wife up culminated in Lovett
6 contacting Plaintiff's wife and imploring her to meet with Lovett for purposes of reviewing
7 Plaintiff's prison file, which Lovett had purloined from MSP. Lovett purported to Plaintiff's
8 wife that Lovett had medical information about Plaintiff's cancer spreading that Plaintiff was not
9 himself privy to. Fearing for her safety, Plaintiff's wife contacted MSP as the incident was
10 transpiring. MSP did not take the incident seriously until Plaintiff's wife precisely described the
11 folder she was looking at containing Plaintiff's prison records. Lovett was immediately
12 apprehended by law enforcement. The following day, Lovett made a menacing call to Plaintiff's
13 wife chastising her for what she did to get Lovett in trouble with MSP. Neither Plaintiff nor his
14 wife were contacted about the results of MSP's "investigation" into the incident. As a result of
15 this incident, employees of Defendant's prison have continued to harass Plaintiff by: denying
16 medical care to Plaintiff, denying mail to Plaintiff, misappropriating deposits made to Plaintiff's
17 inmate account, not delivering canteen items to Plaintiff that were debited from Plaintiff's inmate
18 account, citing Plaintiff for disciplinary violations without cause, making disparaging comments
19 to Plaintiff while he was receiving limited medical treatment, even as recently as September 1,
20 2014, all while purporting to be acting at the direction of Lovett.

21 3.5 Surgery was performed in May or June 2010 by Dr. Mark F. Ozog (Dr. Ozog), an
22 Ophthalmologist operating Ozog Eye Care & Laser Center, in Great Falls, Montana, in order to
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1 remove the cancerous tumor that had been growing within Plaintiff's right eye.

2 3.6 Defendant subsequently failed to follow Dr. Ozog's after-care instructions for Plaintiff,
3 including but not limited to: the application of post-surgery medications, regular radiologic
4 scans, obtaining a prosthetic eye, among others. Defendant's failure to provide Plaintiff with a
5 prosthetic eye, as ordered by Dr. Ozog, has caused Plaintiff severe pain and anxiety.

6 3.7 Additionally, since 2009 when Plaintiff was transferred to Defendant's facility,
7 Defendant has denied Plaintiff regular administration of his prescription for Wellbutrin and/or
8 other much needed and prescribed mental health medications. Defendant's stated justification
9 for failing to regularly provide Wellbutrin to Plaintiff, as prescribed, is that Wellbutrin is a drug
10 frequently abused by prison inmates. Defendant's sporadic administration of Plaintiff's much
11 needed mental health medications has caused Plaintiff debilitating mood swings, as well as other
12 similarly serious side-effects.
13

14 3.8 As a result of Defendant's acts and omissions, Plaintiff has: sustained severe physical
15 pain and discomfort; sustained mental anguish relating to whether the cancer has spread
16 throughout his body; needlessly endured debilitating mood swings.
17

18 3.9 On July 15, 2014, after Plaintiff filed a medical malpractice claim, against Defendant,
19 with the Montana Medical-Legal Panel, Defendant authorized a radiology scan capable of
20 detecting whether Plaintiff's cancer has spread since Plaintiff's surgery in 2009. Plaintiff had
21 been pleading with Defendant for routine testing every three to six months, in accordance with
22 previous treating physicians' recommendations, due to intense abdominal pain Plaintiff was
23 experiencing. The Radiologist reviewing the scan recommended an MRI of Plaintiff's abdomen
24 and liver because of abnormalities observed. Defendant refused to provide the recommended
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1 treatment to Plaintiff.

2 **4. FIRST CAUSE OF ACTION – NEGLIGENCE**

3 4.1 The facts stated in part 3 are reallaged and incorporated herein as if fully set forth.

4 4.2 Defendant owes a duty to Plaintiff to provide reasonable medical care to Plaintiff.

5 4.3 Defendant has breached its duty by failing to provide reasonable medical care to Plaintiff.

6 Plaintiff has sustained severe physical and emotional injuries as a result of Defendant's breach of
7 the duty it owes to Plaintiff. Defendant's breach of its duty owed to Plaintiff is the proximate
8 cause of Plaintiff's injuries. But for Defendant's breach, Plaintiff would not have experienced
9 severe physical and emotional harm.
10

11 **5. SECOND CAUSE OF ACTION – NEGLIGENT INFLECTION OF EMOTIONAL**
12 **DISTRESS**

13 5.1 The facts stated in part 3 are reallaged and incorporated herein as if fully set forth.

14 5.2 Defendant's negligent administration of reasonable medical care negligently caused
15 Plaintiff emotional distress in the form of severe mental anguish.

16 5.3 Defendant owed Plaintiff a duty to be responsive to Plaintiff's reasonable medical
17 requests. Defendant breach its duty owed to Plaintiff by failing to provide reasonable medical
18 care to Plaintiff. Defendant's breach resulted in intense physical pain and mental anguish to
19 Plaintiff. Defendant's breach was the proximate cause of the intense physical pain and mental
20 anguish suffered by Plaintiff. But for Defendant's breach of its duty owed to Plaintiff, Plaintiff
21 would not have experienced severe emotional distress.
22

23 **6. THIRD CAUSE OF ACTION – INTENTIONAL INFLECTION OF EMOTIONAL**
24 **DISTRESS**

25 6.1 The facts stated in part 3 are reallaged and incorporated herein as if fully set forth.
26

1 6.2 Defendant intentionally inflicted emotional distress upon Plaintiff by continuing to
2 intentionally: bully Plaintiff, denying Plaintiff medical care, withhold medical information from
3 Plaintiff regarding the current state of his cancer, denying regular mail service to Plaintiff,
4 misappropriating deposits made to Plaintiff's inmate account, as well as debiting Plaintiff's
5 account for canteen purchases but not delivering purchased items to Plaintiff. Plaintiff has also
6 been subjected to retaliatory discipline without cause. All of these repeated intentional incidents
7 have caused Plaintiff severe emotional distress.
8

9 **7. FOURTH CAUSE OF ACTION – NEGLIGENT SUPERVISION**

10 7.1 The facts stated in part 3 are reallaged and incorporated herein as if fully set forth.

11 7.2 Defendant's failure to reasonably supervise its employees, thereby allowing them to
12 withhold proper medical attention from Plaintiff, as well as allowing Plaintiff to be
13 systematically bullied by Defendant's staff, has resulted in severe mental anguish and physical
14 pain on the part of Plaintiff.
15

16 7.3 Defendant owes Plaintiff a duty to ensure that its employees perform their job functions
17 in a reasonable manner. Defendant breached its duty owed to Plaintiff by continuing to allow
18 Defendant's employees to bully Plaintiff and withhold reasonable medical care from Plaintiff, as
19 well as allowing Plaintiff to be the victim of discipline without cause. Defendant's breach has
20 caused severe mental anguish and physical pain on the part of Plaintiff. The breach of this duty
21 is the proximate cause of severe mental anguish and physical pain on the part of Plaintiff. But
22 for Defendant's breach of its duty, Plaintiff would not have sustained severe mental anguish and
23 physical pain.
24

25 //

PRAYER FOR RELIEF

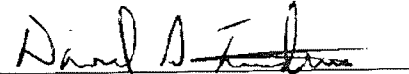
WHEREFORE, Plaintiff seeks relief as follows:

1. Judgment against the Defendant on behalf of Plaintiff.
2. Damages, to be proven at trial and not specifically stated herein pursuant to Section 25-4-311, MCA (2013), based on the following theories:
 - a. Compensatory damages, for: physical pain, mental anguish, disfigurement, loss of earnings and earning capacity, physical impairment, future medical expenses, loss of enjoyment of life;
 - b. Punitive damages;
3. Attorney and paralegal fees allowable under Sections 25-10-301 et seq., MCA (2013);
4. Court costs allowable under Section 25-10-201, MCA (2013);
5. For any further relief deemed just and proper by the Court and/or jury.

DATED this 2nd day of September, 2014.

Law Offices of David S. Freedman, P.C.

By:



David S. Freedman
Attorney at Law